

After reviewing the record and considering the arguments, the Appeals Board concludes that the order by the Administrative Law Judge denying benefits should be affirmed.

Claimant filed an Application for Hearing in this case on September 11, 1996, and initially alleged repetitive overuse injuries to both hands and arms. Claimant amended the application in October 1996 to add a claim for injury to his low back. Claimant alleges that he injured his low back over a period of time ending at the termination of his employment for respondent on approximately September 6, 1996. Respondent contends claimant did not give timely notice of the back injury.

Claimant testified that he believes he mentioned his sore back to his employer sometime before he was terminated. In context with other facts in the case, the Appeals Board agrees with the finding by the Administrative Law Judge that claimant did not give notice sufficient to satisfy the statutory requirements. Claimant notified respondent of the bilateral upper extremity injuries. He filled out a written report regarding that injury. He did not at that time mention his alleged low-back injury. He also did not include the low-back claim in his initial application for hearing. Notice should be sufficient to alert respondent of the possible work connection. The evidence does not convincingly establish such a notice in this case. Claimant makes no attempt to establish just cause for failure to give notice.

Having found that claimant failed to give adequate notice, the Appeals Board will not address the finding that claimant did not establish an injury arising out of and in the course of his employment. That issue is, in fact, moot. The Appeals Board, therefore, agrees with and affirms the decision to deny benefits.

WHEREFORE, the Appeals Board finds that the preliminary hearing order of Administrative Law Judge Kenneth S. Johnson, dated June 17, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
David J. Rebein, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director